



January 6, 2017

Mr. Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Re: RIN 3052-AD11 Loans in Areas Having Special Flood Hazards- Private Flood Insurance

Dear Mr. Mardock:

The Farm Credit Council, on behalf of its membership, appreciates the opportunity to comment on the joint notice of Proposed Rulemaking regarding Loans in Areas Having Special Flood Hazards – Private Flood Insurance. The comments that follow were developed after soliciting input from all our members (the “System”). These comments are also submitted in accord with the Policy Resolutions adopted by our members.

Some institutions of the System may be submitting their own comments, and we urge the FCA to consider their views as well as those expressed herein.

General

In many aspects, it is clear the regulators listened to and incorporated comments made in response to the October 2013 Proposed Rule and as lenders, we appreciate that effort. For example, the exception made for mutual aid societies in 614.4930(c)(4) will be very useful for Farm Credit lenders. However, the Proposed Rule retains the difficult process lenders will face when attempting to determine whether a private policy meets the definition of “private flood insurance.” For the reasons set forth below, we respectfully request that the Agencies reformulate the Proposed Rule to more appropriately place the responsibility for analysis of private insurance policies and comparison of them to the Standard Flood Insurance Policy (SFIP) on the insurance industry, not lenders.

Congress, FEMA and the regulators want to expand the use of flood insurance policies issued by private insurance companies, and spread some risk to the private sector. If a private insurance company wants to enter this market and compete with the SFIP, they must ensure the borrower and lender that their policy meets the minimum standards required by NFIP, FEMA and regulators.

Mandatory Acceptance

In order to issue an insurance policy, a private insurance company must be licensed, admitted or approved, or recognized to do business in a particular state. Part of that approval process

includes a review by the state insurance regulator of the insurance policies issued by the insurance company.

The problem: The proposed 614.4925 regulation provides that a policy issued by a private insurance company meeting the three following criteria, must be accepted by the lender:

- (1) the policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition;*
- (2) the regulated lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and*
- (3) the policy includes the following provision within the policy or as an endorsement to the policy: "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation" (emphasis supplied).*

Private insurance companies are better equipped than lenders to determine whether their insurance policy meets state and federal insurance regulations. Additionally, the state insurance regulators have experience determining whether particular policies are acceptable in their respective states.

If adopted as proposed, most lenders would need to hire trained insurance experts. This increase in staffing and training would be replicated nationwide by all lenders and servicers. The proposed rule puts lenders in the unenviable role of being the private insurance company enforcer without having adequate resources. Because financial regulators do not have direct control over private insurance companies, you are requiring lenders, over whom you do have control, to step in and conduct a compliance examination of the flood insurance policies of private insurance companies.

Customers look to market professionals when examining products. They seek out lenders for information on loans and insurance companies and agents for information on insurance.

Solution No. 1: This safeguard can be easily and more logically accomplished by deleting 614.4930(c)(2)(ii) and replacing it with a certification by the private insurance company that their policy includes the provisions required in 614.4930(c)(2)(i). In addition, require that certifying private insurance companies file their policy certifications with the insurance regulator of the State where the property is located, as well as with FEMA.

Solution No. 2: If lenders will be examined and held accountable for making the determination described in 614.4930(c)(2)(i), revisions of (i) and (ii) are necessary as follows, to shift the verification obligation:

- (1) the policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of private flood insurance by*

identifying the provisions of the policy that meet each criterion in the definition, verifies that these provisions satisfy the criteria included in the definition, and confirms that the insurer is regulated in accordance with that definition;

(2) the regulated lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary, and

With those changes, lenders could refer to the numbered policy provisions in the private insurance company's policy summary and determine that the provision is contained in the policy, like checking a box.

Discretionary Acceptance

While we appreciate having the flexibility to accept a flood insurance policy that does not meet the criteria of 614.4925, lenders will not be willing to take the risk of exercising such discretionary acceptance because of the high level of technical expertise required to analyze the entire policy. If adequately defined, the discretionary acceptance criteria could potentially provide Farm Credit lenders some increased opportunities for flood insurance coverage on nonresidential properties, which comprise a substantial percentage of our loan portfolios. In order to resolve this, we ask that regulators provide more guidance on discretionary acceptance:

- Include a reasonable, understandable compliance aid.
- Provide more guidance, perhaps in the form of examples, to help the lender determine the coverage is "similar to coverage provided in the SFIP" (614.4930(c)(3)(iv)(B)).
- Provide examples demonstrating "coverage at least as broad as the SFIP", the review standard used in the mandatory acceptance, and "similar to coverage provided in the SFIP", the review standard for discretionary acceptance.

Conclusion

For the reasons set forth herein, we urge that the mandatory acceptance compliance aid remove the "verification" criteria and that private insurance company certify their policy includes the provisions required in 614.4930(c)(2)(i), or in the alternative that the verification requirement be shifted to the private insurance company. In addition, regarding discretionary acceptance, we request that a compliance aid be developed and that further definition and guidance be added.

Sincerely,



Charles P. Dana
General Counsel